

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 187 of 2005

Allahabad, this the **30th** day of **September**, 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)

Hon'ble Mr. S.N. Shukla, Member (A)

Sushil Kumar Awasthi son of Late Shiv Shankar Awasthi R/o Village Derveshpur, Post Office Rari Bujurg, District Fatehpur working as Junior Engineer II (P Way) Pitamberpur, Bareilly, Northern Railway, Bareilly.

Applicant

By Advocate: Mr. S.K. Pandey

Vs.

1. Union of India through the General Manager Northern Railway Board, House, New Delhi.
2. The Chief Track Engineer, Northern Railway, New Delhi.
3. The Additional Divisional Railway Manager Appellate Authority Northern Railway Moradabad.
4. Divisional Superintending Engineer, Coordination Northern Railway, Moradabad Division, Moradabad.

Respondents

By Advocate: Mr. Avnish Tripathi

ORDER


By Hon'ble Mr. Justice S.C. Sharma, J.M.

Under challenge in this O.A. are Orders dated 01.03.2002, 05.12.2002 and 06.10.2003 passed by respondents No. 4, 3 and 2 respectively (annexure-1, annexure-2 and annexure-3 respectively to the O.A.).

2. The pleadings of the parties may be summarized as follows: -

The applicant was posted as Junior Engineer II (P. Way), Pitamberpur, Bareilly Junction at the relevant period. During service of the applicant, accident/derailment took place on 05.07.2000 at 15.25 hours at KM 1303/07 in between Rasuiya -

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Cause 

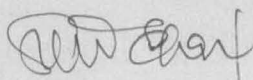
Chaneti up line. For ascertaining the ~~case~~ ^{cause} of derailment, a joint report was prepared by the Officers of the Railway. Thereafter on the basis of report, final inquiry was ordered, and in the final inquiry the applicant along with Mr. Kamal Kumar Saxena was found guilty and order of punishment was issued. After availing all the alternative remedies, O.A. has been filed.

3. The respondents in the Counter Reply denied the allegations contained in the O.A. and it has further been alleged that due to negligence of the applicant and Mr. Kamal Kumar Saxen, accident/derailment took place on 05.07.2000 at 15.25 hours at KM 1303/07 in between Rasuiya - Chaneti up line. Separate inquiries were conducted against both the persons, and both were punished.

4. We have heard Mr. Santosh Kumar Pandey, Advocate for the applicant and Mr. Avnish Tripathi, Advocate for the respondents and perused the entire facts of the case.

5. Learned counsel for the applicant argued that by Order of the Court, file of O.A. No. 535 of 2004 has been consolidated with this O.A. although O.A. No. 535 of 2004 had already been decided by this Tribunal vide Order dated 05.06.2007. Learned counsel for the applicant further argued that the applicant along with Mr. Kamal Kumar Saxena was found guilty for accident/derailment. Both faced inquiry and both were punished. We have perused the Order passed in O.A. No. 535 of 2004 by this Tribunal. Following orders were passed in O.A. No. 535 of 2004: -

"For the reasons stated above, we are of the view that three impugned orders dated 1.3.2002, the appellate order dated 26.12.2002 and the order of the Second Appeal dated 06.10.2003 are liable to be set aside. We, therefore, set aside



the above orders but with liberty to the Disciplinary Authority, to get the enquiry held afresh in accordance with relevant Rules, from the stage of service of the charge sheet, after supplying the copy of subsequent fact finding enquiry report as mentioned above, and pass suitable orders in accordance with law. No cost."

Learned counsel for the applicant, under these circumstances, requested and prayed that the instant O.A. relating to the applicant-Mr. S.K. Awasthi is also to be decided accordingly as in the case of Mr. Kamal Kumar Saxena order has been passed for conducting fresh inquiry, same order be passed in the present O.A. also.

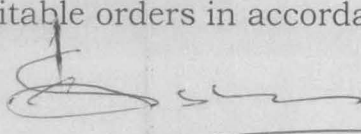
6. Mr. Avnish Tripathi, Advocate for the respondents stated at this stage that firstly the dates of Orders of punishment awarded by the Disciplinary Authority, Appellate Authority and Second Appellate Authority are different from the case of Mr. Kamal Kumar Saxena, and further argued that in the case of the applicant every higher authority reduced the punishment, awarded by the Disciplinary Authority. Under these circumstances, case of the applicant is different and distinct. It is a fact that orders regarding punishment by the Disciplinary Authority/Appellate Authority etc. have been passed in the case of the applicant on different dates from the dates on which the orders were passed in the case of Mr. Kamal Kumar Saxena. It may also be a fact that different punishment was awarded to both the persons, who were held guilty but it is an undisputed and admitted fact that both the employees namely the applicant- Mr. Sushil Kumar Awasthi and Mr. Kamal Kumar Saxena were held responsible and guilty for accident/derailment took place on 05.07.2000 at 15.25 hours at KM 1303/07 in between Rasuiya - Chaneti up line. The date, time and place of the accident is the same and it may be but natural that different

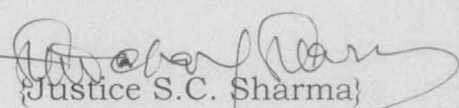
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punishment orders were passed by the Disciplinary Authority and Appellate Authority on different dates. But learned counsel for the applicant argued that both these persons faced joint inquiry and not the separate inquiry. Under these circumstances, we are in full agreement with the arguments of learned counsel for the applicant that as fresh inquiry has been ordered in the O.A. of Mr. Kamal Kumar Saxena then, it shall affect the entire case of the applicant also. If the inquiry is to be conducted that will be against the applicant also and punishment shall also be affected. Then, the Disciplinary Authority will have to pass separate order for punishment and then the applicant shall have a right to file an Appeal against the Order of Disciplinary Authority.

7. For the reasons mentioned above, this O.A. deserves to be decided in the same manner as has been decided in the case of Mr. Kamal Kumar Saxena.

8. Under these circumstances, the Orders dated 01.03.2002, 05.12.2002 and 06.10.2003 passed by respondents No. 4, 3 and 2 respectively (annexure-1, annexure-2 and annexure-3 respectively to the O.A.) are quashed and set aside. However, the respondents are at liberty to get the inquiry held afresh in accordance with the Rules from the stage of service of charge sheet, after supplying the copy of subsequent fact finding enquiry report as mentioned above, and pass suitable orders in accordance with law. No cost.


[S.N. Shukla]
Member - A


[Justice S.C. Sharma]
Member - J